

2003 DRAFTING REQUEST

Bill

Received: **10/13/2003**

Received By: **gmalaise**

Wanted: **10/17/2003**

Identical to LRB:

For: **Glenn Grothman (608) 264-8486**

By/Representing: **Jim Emerson**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - minimum wage**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Grothman@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Preemption of local minimum wage ordinances

Instructions:

Redraft 1997 AB 839.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/13/2003	wjackson 10/14/2003 wjackson 10/14/2003	pgreensl 10/14/2003	_____			S&L
/1			jfrantze 10/14/2003	_____	lemery 10/14/2003	mbarman 10/15/2003	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

AA intro.

<END>

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1/?	gmalaise	1 WLJ 10/14	J 10/14	J Pa 10/14			

FE Sent For:

<END>

1997 ASSEMBLY BILL 839

February 25, 1998 - Introduced by Representatives GROTHMAN, ALBERS, BRANDEMUEHL and DUFF, cosponsored by Senators WELCH and ROESSLER. Referred to Committee on Labor and Employment.

1 AN ACT *to renumber and amend* 104.08 (1), 104.08 (2) and 104.08 (3); *to amend*
2 104.01 (intro.), 104.03, 104.04, 104.10 and 104.11; and *to create* 104.001 and
3 104.08 (1) (b) of the statutes; **relating to:** preemption of county, city, village or
4 town living-wage ordinances.

Analysis by the Legislative Reference Bureau

Under current law, a city or village, or a town that has authorized its board to exercise village powers, may determine its own local affairs, and a county may exercise any organizational or administrative power, subject only to the Wisconsin Constitution and to any enactment of the legislature that is of statewide concern and that affects every county, city, village or town with uniformity.

This bill requires that the state minimum wage law, under which an employer may not pay an employe less than a living-wage, be construed as an enactment of statewide concern for the purpose of providing a living-wage that is uniform throughout the state. As such, the bill permits a county, city, village or town to enact an ordinance establishing a living-wage only if the ordinance strictly conforms to the state minimum wage law.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 104.001 of the statutes is created to read:

1 **104.001 Statewide concern; uniformity.** (1) This chapter shall be
2 construed as an enactment of statewide concern for the purpose of providing a
3 living-wage that is uniform throughout the state.

4 (2) A county, city, village or town may enact and administer an ordinance
5 establishing a living-wage only if the ordinance strictly conforms to this chapter and
6 any rules promulgated under this chapter. Except as provided in sub. (3), a county,
7 city, village or town may not administer an ordinance establishing a living-wage
8 unless that ordinance strictly conforms to this chapter and any rules promulgated
9 under this chapter.

10 (3) A county, city, village or town that has a living-wage ordinance in effect on
11 the effective date of this subsection [revisor inserts date], may maintain and
12 administer that ordinance if the department reviews the ordinance and determines
13 that the ordinance strictly conforms to this chapter and any rules promulgated under
14 this chapter. If the department determines that any part of the existing ordinance
15 does not strictly conform to this chapter and any rules promulgated under this
16 chapter, the county, city, village or town may amend the ordinance and submit the
17 amended ordinance to the department for approval. After obtaining the approval of
18 the department under this subsection, a county, city, village or town may not amend
19 the ordinance except to maintain strict conformity with this chapter and any rules
20 promulgated under this chapter.

21 (4) A county ordinance enacted under this section does not apply within any
22 city, village or town that has enacted or enacts an ordinance under this section.

23 (5) This section does not affect the requirement that employes employed on a
24 public works project contracted for by a county, city, village or town be paid at the
25 prevailing wage rate, as defined in s. 66.293 (1) (g), as required under s. 66.293.

ASSEMBLY BILL 839

1 **SECTION 2.** 104.01 (intro.) of the statutes is amended to read:

2 **104.01 Definitions.** (intro.) The following terms as used in ~~ss. 104.01 to~~
3 ~~104.12~~ this chapter shall be construed as follows:

4 **SECTION 3.** 104.03 of the statutes is amended to read:

5 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
6 to pay any employe a wage lower or less in value than a living-wage is guilty of a
7 violation of ~~ss. 104.01 to 104.12~~ this chapter.

8 **SECTION 4.** 104.04 of the statutes is amended to read:

9 **104.04 Classifications; department's authority.** The department shall
10 investigate, ascertain, determine and fix such reasonable classifications, and shall
11 impose general or special orders, determining the living-wage, and shall carry out
12 the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations, classifications
13 and orders shall be made as provided under s. 103.005, and the penalties specified
14 in s. 103.005 (12) shall apply to and be imposed for any violation of ~~ss. 104.01 to~~
15 ~~104.12~~ this chapter. In determining the living-wage, the department may consider
16 the effect that an increase in the living-wage might have on the economy of the state,
17 including the effect of a living-wage increase on job creation, retention and
18 expansion, on the availability of entry-level jobs and on regional economic conditions
19 within the state. The department may not establish a different minimum wage for
20 men and women. Said orders shall be subject to review in the manner provided in
21 ch. 227.

22 **SECTION 5.** 104.08 (1) of the statutes is renumbered 104.08 (2) and amended
23 to read:

24 **104.08 (2)** ~~All persons~~ Any person working in ~~an occupation~~ a trade industry
25 for which a living-wage has been established for minors, and who ~~shall have~~ has no

ASSEMBLY BILL 839

1 trade, shall, ~~if employed in an occupation which is a trade industry,~~ be indentured
2 under the provisions of s. 106.01

3 **SECTION 6.** 104.08 (1) (b) of the statutes is created to read:

4 104.08 (1) (b) "Trade industry" means an industry involving physical labor and
5 characterized by mechanical skill and training such as render a period of instruction
6 reasonably necessary.

7 **SECTION 7.** 104.08 (2) of the statutes is renumbered 104.08 (1) (intro.) and
8 amended to read:

9 104.08 (1) (intro.) ~~A "trade" or a "trade industry" within the meaning of ss.~~
10 ~~104.01 to 104.12 shall be a trade or~~ In this section:

11 (a) "Trade" means an industry occupation involving physical labor and
12 characterized by mechanical skill and training such as render a period of instruction
13 reasonably necessary.

14 (3) (a) The department shall investigate, determine and declare what
15 occupations and industries are included within the phrase a "trade" or a "trade
16 industry".

17 **SECTION 8.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and amended
18 to read:

19 104.08 (3) (b) The department may make exceptions to the operation of ~~subs.~~
20 ~~(1) and sub. (2)~~ where conditions make ~~their~~ its application unreasonable.

21 **SECTION 9.** 104.10 of the statutes is amended to read:

22 **104.10 Penalty for intimidating witness.** Any employer who discharges or
23 threatens to discharge, or in any way discriminates, or threatens to discriminate
24 against any employe because the employe has testified or is about to testify, or
25 because the employer believes that the employe may testify, in any investigation or

ASSEMBLY BILL 839

1 proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~ this chapter, is guilty
2 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for
3 each offense.

4 **SECTION 10.** 104.11 of the statutes is amended to read:

5 **104.11 Definition of violation.** Each day during which any employer shall
6 employ a person for whom a living-wage has been fixed at a wage less than the
7 living-wage fixed shall constitute a separate and distinct violation of ~~ss. 104.01 to~~
8 ~~104.12~~ this chapter.

9 **SECTION 11. Initial applicability.**

10 (1) This act first applies to an employe who is affected by a collective bargaining
11 agreement that contains provisions that are inconsistent with section 104.001 of the
12 statutes, as created by this act, on the day after the collective bargaining agreement
13 expires or on the day on which the collective bargaining agreement is extended,
14 modified or renewed, whichever occurs first.

15

(END)

This week 10/14

2003 BILL

NOTE

Regenerate

1 AN ACT *to renumber and amend* 104.08 (1), 104.08 (2) and 104.08 (3); *to amend*
 2 104.01 (intro.), 104.01 (5), 104.02, 104.03, 104.04, 104.05, 104.06, 104.07 (1),
 3 104.07 (2), 104.10, 104.11 and 104.12; and *to create* 66.0901 (1m), 104.001 and
 4 104.08 (1m) (b) of the statutes; **relating to:** preemption of county, city, village,
 5 or town living wage ordinances.

Analysis by the Legislative Reference Bureau

Under current constitutional and statutory home rule provisions, a city or village may determine its own local affairs subject only to the Wisconsin Constitution and to any enactment of the legislature that is of statewide concern and that affects every city or village with uniformity.

This bill requires that the state minimum wage law, under which an employer may not pay an employee less than a living wage, be construed as an enactment of statewide concern for the purpose of providing a living wage that is uniform throughout the state. As such, the bill permits a county, city, village, or town to enact an ordinance establishing a living wage only if the ordinance strictly conforms to the state minimum wage law.

~~This bill prohibits the state and local units of government, including cities, villages, towns, counties, school districts, sewerage districts, drainage districts, and technical college districts from requiring any contractor or subcontractor to pay any employee more than the minimum wage on any public contract. The prohibition in the bill, however, does not apply to public works contracts to which the prevailing wage statutes apply.~~

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0901 (1m) of the statutes is created to read:

2 ~~66.0901 (1m) PROHIBITION ON PAYING MORE THAN MINIMUM WAGE. (a) This~~
3 ~~subsection shall be construed as an enactment of statewide concern for the purpose~~
4 ~~of requiring a uniform minimum wage throughout the state.~~

5 ~~(b) Except as provided in ss. 66.0903, 103.49, and 103.50, no municipality may~~
6 ~~require any contractor or subcontractor to pay any employee more than the~~
7 ~~minimum wage, as defined in s. 49.141 (1) (g), on any public contract.~~

8 **SECTION 2.** 104.001 of the statutes is created to read:

9 **104.001 Statewide concern; uniformity.** (1) This chapter shall be
10 construed as an enactment of statewide concern for the purpose of providing a living
11 wage that is uniform throughout the state.

12 (2) A county, city, village, or town may enact and administer an ordinance
13 establishing a living wage only if the ordinance strictly conforms to this chapter and
14 any rules promulgated under this chapter. Except as provided in sub. (3), a county,
15 city, village, or town may not administer an ordinance establishing a living wage
16 unless that ordinance strictly conforms to this chapter and any rules promulgated
17 under this chapter.

18 (3) A county, city, village, or town that has a living wage ordinance in effect on
19 the effective date of this subsection [revisor inserts date], may maintain and
20 administer that ordinance if the department reviews the ordinance and determines
21 that the ordinance strictly conforms to this chapter and any rules promulgated under

BILL

1 this chapter. If the department determines that any part of the existing ordinance
2 does not strictly conform to this chapter and any rules promulgated under this
3 chapter, the county, city, village, or town may amend the ordinance and submit the
4 amended ordinance to the department for a determination of whether the amended
5 ordinance strictly conforms to this chapter and any rules promulgated under this
6 chapter. A county, city, village, or town may not amend a living wage ordinance
7 except to maintain strict conformity with this chapter and any rules promulgated
8 under this chapter.

9 (4) A county ordinance enacted under this section does not apply within any
10 city, village, or town that has enacted or enacts an ordinance under this section.

11 (5) This section does not affect the requirement that employees employed on
12 a public works project contracted for by a county, city, village, or town be paid at the
13 prevailing wage rate, as defined in s. 66.0903 (1) (g), as required under s. 66.0903.

14 SECTION 3. 104.01 (intro.) of the statutes is amended to read:

15 **104.01 Definitions.** (intro.) The following terms as used in ~~ss. 104.01 to~~
16 ~~104.12~~ this chapter shall be construed as follows:

17 SECTION 4. 104.01 (5) of the statutes is amended to read:

18 104.01 (5) ~~The term “living wage” shall mean~~ “Living wage” means
19 compensation for labor paid, whether by time, piecework, or otherwise, sufficient to
20 enable the employee receiving ~~it~~ the compensation to maintain himself or herself
21 under conditions consistent with his or her welfare.

22 SECTION 5. 104.02 of the statutes is amended to read:

23 **104.02 ~~Living wage~~ Living wage prescribed.** Every wage paid or agreed
24 to be paid by any employer to any employee, except as otherwise provided in s.
25 104.07, shall be not less than a ~~living wage~~ living wage.

BILL

1 **SECTION 6.** 104.03 of the statutes is amended to read:

2 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
3 to pay any employee a wage lower or less in value than a ~~living wage~~ living wage is
4 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

5 **SECTION 7.** 104.04 of the statutes is amended to read:

6 **104.04 Classifications; department's authority.** The department shall
7 investigate, ascertain, determine, and fix such reasonable classifications, and shall
8 impose general or special orders, determining the ~~living wage~~ living wage, and shall
9 carry out the purposes of ~~ss. 104.01 to 104.12~~ this chapter. Such investigations,
10 classifications, and orders shall be made as provided under s. 103.005, and the
11 penalties specified in s. 103.005 (12) shall apply to and be imposed for any violation
12 of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living wage~~ living wage, the
13 department may consider the effect that an increase in the ~~living wage~~ living wage
14 might have on the economy of the state, including the effect of a ~~living wage~~ living
15 wage increase on job creation, retention, and expansion, on the availability of
16 entry-level jobs, and on regional economic conditions within the state. The
17 department may not establish a different minimum wage for men and women. Said
18 orders shall be subject to review in the manner provided in ch. 227.

19 **SECTION 8.** 104.05 of the statutes is amended to read:

20 **104.05 Complaints; investigation.** The department shall, within 20 days
21 after the filing of a verified complaint of any person setting forth that the wages paid
22 to any employee in any occupation are not sufficient to enable the employee to
23 maintain himself or herself under conditions consistent with his or her welfare,
24 investigate and determine whether there is reasonable cause to believe that the wage
25 paid to any employee is not a ~~living wage~~ living wage.

BILL

1 **SECTION 9.** 104.06 of the statutes is amended to read:

2 **104.06 Wage council; determination.** If, upon investigation, the
3 department finds that there is reasonable cause to believe that the wages paid to any
4 employee are not a ~~living wage~~, it living wage, the department shall appoint a wage
5 council, selected so as fairly to represent employers, employees, and the public, to
6 assist in its investigations and determinations. The ~~living wage~~ living wage so
7 determined upon shall be the ~~living wage~~ living wage for all employees within the
8 same class as established by the classification of the department.

9 **SECTION 10.** 104.07 (1) of the statutes is amended to read:

10 **104.07 (1)** The department shall make rules, and, except as provided under
11 subs. (5) and (6), grant licenses, to any employer who employs any employee who is
12 unable to earn the living wage theretofore determined upon living wage determined
13 by the department, permitting such person the employee to work for a wage which
14 shall be that is commensurate with the employee's ability and each. Each license so
15 granted shall establish a wage for the licensee.

16 **SECTION 11.** 104.07 (2) of the statutes is amended to read:

17 **104.07 (2)** The department shall make rules, and, except as provided under
18 subs. (5) and (6), grant licenses to sheltered workshops, to permit the employment
19 of workers with disabilities who are unable to earn the ~~living wage~~ living wage at
20 a wage that is commensurate with their ability and productivity. A license granted
21 to a sheltered workshop under this ~~section~~ subsection may be issued for the entire
22 workshop or a department of the workshop.

23 **SECTION 12.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and amended
24 to read:

BILL

1 104.08 (2m) ~~All persons~~ Any person working in ~~an occupation a trade industry~~
2 for which a ~~living wage~~ living wage has been established for minors, and who shall
3 ~~have~~ has no trade, shall, ~~if employed in an occupation which is a trade industry,~~ be
4 indentured under ~~the provisions of s. 106.01.~~

5 **SECTION 13.** 104.08 (1m) (b) of the statutes is created to read:

6 104.08 (1m) (b) "Trade industry" means an industry involving physical labor
7 and characterized by mechanical skill and training such as render a period of
8 instruction reasonably necessary.

9 **SECTION 14.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and
10 amended to read:

11 104.08 (1m) (intro.) ~~A "trade" or a "trade industry" within the meaning of ss.~~
12 ~~104.01 to 104.12 shall be a trade or~~ In this section:

13 (a) "Trade" means an industry occupation involving physical labor and
14 characterized by mechanical skill and training such as render a period of instruction
15 reasonably necessary.

16 (3) (a) The department shall investigate, determine, and declare what
17 occupations and industries are included within ~~the phrase a "trade" or a "trade~~
18 ~~industry".~~

19 **SECTION 15.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and
20 amended to read:

21 104.08 (3) (b) The department may make exceptions to the operation of subs.
22 ~~(1) and (2) where~~ sub. (2m) when conditions make ~~their~~ its application unreasonable.

23 **SECTION 16.** 104.10 of the statutes is amended to read:

24 **104.10 Penalty for intimidating witness.** Any employer who discharges or
25 threatens to discharge, or in any way discriminates, or threatens to discriminate

BILL

1 against any employee because the employee has testified or is about to testify, or
2 because the employer believes that the employee may testify, in any investigation or
3 proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~ this chapter, is guilty
4 of a misdemeanor, and upon conviction thereof shall be punished by a fine of \$25 for
5 each offense.

6 **SECTION 17.** 104.11 of the statutes is amended to read:

7 **104.11 Definition of violation.** Each day during which any employer shall
8 employ a person for whom a ~~living-wage~~ living wage has been fixed at a wage less
9 than the ~~living-wage~~ living wage fixed shall constitute a separate and distinct
10 violation of ~~ss. 104.01 to 104.12~~ this chapter.

11 **SECTION 18.** 104.12 of the statutes is amended to read:

12 **104.12 Complaints.** Any person may register with the department a
13 complaint that the wages paid to ~~employees~~ an employee for whom a ~~living-wage~~
14 living wage has been established are less than that rate living wage, and the
15 department shall investigate the matter and take all proceedings necessary to
16 enforce the payment of a wage that is not less than the ~~living-wage~~ living wage.
17 Section 111.322 (2m) applies to discharge and other discriminatory acts arising in
18 connection with any proceeding under this section.

19 **SECTION 19. Initial applicability.** This act

20 (1) ~~COLLECTIVE BARGAINING AGREEMENTS.~~ The treatment of section 104.001 of the
21 statutes first applies to an employee who is affected by a collective bargaining
22 agreement that contains provisions that are inconsistent with section 104.001 of the
23 statutes, as created by this act, on the day on which the collective bargaining
24 agreement expires or is extended, modified, or renewed, whichever occurs first.

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(2) PUBLIC CONTRACTS. ~~The treatment of section 66.0901 (1m) of the statutes first applies to a public contract that takes effect on the effective date of this subsection.~~

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

3484 /Idn
LRB-3390/1d
GMM:AMRS:wlj:jl

October 2, 2003

Prohibits

Section 104.001 was created by this draft,
contains a statement

Representative Grothman:

~~Created ss. 66.0901 (1m) and 104.001 contain statements of legislative intent, and prohibit the state and local units of government from requiring contractors to pay more than the minimum wage and local units of government from enacting local minimum wage ordinances, but you should know that there is still some possibility that a city or village could claim that those statutes, if enacted, violate the state constitutional home rule provision.~~

Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (1) and 62.11 (5) of the statutes, and numerous decisions of the Wisconsin Supreme Court give cities and villages extensive home rule authority. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that prohibiting cities and villages from requiring contractors on local public works projects from paying employees more than the minimum wage and from enacting local minimum wage ordinances is state interference with an issue of local affairs which is not a matter of statewide concern, thus violating Article XI, section 3, of the constitution.

You should know that even if this bill becomes law, cities and villages may not be subject to its provisions. In some cases, if a state law intrudes on an area of local concern, a city may elect not to be governed by the law. See *Ekern*, 642.

Although it is difficult to predict how a court would rule should this bill become law and should a legal challenge be filed, I thought you should at least be aware of these issues. Please let me know if you have any questions.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

~~Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.state.wi.us~~

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3484/1dn
GMM:wlj:jf

October 14, 2003

Representative Grothman:

Section 104.001, as created by this draft, contains a statement of legislative intent, and prohibits local units of government from enacting local minimum wage ordinances, but you should know that there is still some possibility that a city or village could claim that those statutes, if enacted, violate the state constitutional home rule provision.

Article XI, section 3, of the Wisconsin Constitution, as well as ss. 61.34 (1) and 62.11 (5) of the statutes, and numerous decisions of the Wisconsin Supreme Court give cities and villages extensive home rule authority. This constitutional provision "makes a direct grant of legislative power to municipalities" by authorizing them to determine their own local affairs, subject to the constitution and legislative enactments of statewide concern. See *State ex rel. Michalek v. LeGrand*, 77 Wis. 2d 520, 526 (1977), citing *State ex rel. Ekern v. City of Milwaukee*, 190 Wis. 633, 637 (1926).

The provision also stands for the proposition that the state legislature is limited "in its enactments in the field of local affairs of cities and villages" (*Michalek*, 526 citing *Ekern*, 638) and cannot prohibit a city or village from acting in an area that solely involves local affairs and that is not a matter of statewide concern. It could be argued that prohibiting cities and villages from enacting local minimum wage ordinances is state interference with an issue of local affairs which is not a matter of statewide concern, thus violating Article XI, section 3, of the constitution.

You should know that even if this bill becomes law, cities and villages may not be subject to its provisions. In some cases, if a state law intrudes on an area of local concern, a city may elect not to be governed by the law. See *Ekern*, 642.

Although it is difficult to predict how a court would rule should this bill become law and should a legal challenge be filed, I thought you should at least be aware of these issues. Please let me know if you have any questions.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Barman, Mike

From: Emerson, James
Sent: Wednesday, October 15, 2003 3:35 PM
To: LRB.Legal
Subject: Draft review: LRB 03-3484/1 Topic: Preemption of local minimum wage ordinances

It has been requested by <Emerson, James> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3484/1 Topic: Preemption of local minimum wage ordinances